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BOOK REVIEWS

ORVILLE W. WOOD, *Editor-in-Charge*.

HANDBOOK OF MILITARY LAW. By AUSTIN WAKEMAN SCOTT. Cambridge: HARVARD UNIVERSITY PRESS. 1918. pp. vii, 104.

MILITARY LAW AND WAR-TIME LEGISLATION. Compiled by JOHN H. WIGMORE. St. Paul: WEST PUBLISHING Co. 1919. pp. xviii, 858.

THE ARMY AND THE LAW. By GARRARD GLENN. New York: COLUMBIA UNIVERSITY PRESS. 1918. pp. 197.

Professor Scott's little book makes no pretense at being more than a presentation of the Articles of War and the more important passages of the Manual for Courts-Martial in concise form, together with the Selective Service Law and two recent judicial decisions, one relating to the definition by Congress of the various classes of persons who are subject to military law, and the other to the power of Congress to compel military service. It would seem that it might be improved by an index, but it is otherwise well fitted for its object.

The term "Military Law" in the title of Colonel Wigmore's Source Book must be understood in a different sense than that in which it is used in the Manual for Courts-Martial. The work in question treats less of the Articles of War and military law proper than of martial law, the laws of war, and, in brief, every topic relating to war which a lawyer might wish to investigate. The author has brought together statutes, judicial decisions, regulations, general orders, and opinions of the Judge-Advocates General. More than half of the collection consists of material originating in the past three years. Originally intended for class room use in the Students' Army Training Corps, it is at least doubtful whether so heterogeneous a collection of authorities will prove as useful to any other single class of persons, but it contains much matter not readily accessible in the average law office and may well answer the purpose of ready reference.

Mr. Glenn's volume is a readable and informative essay, possessing to a considerable extent the merit that it not only informs but stimulates its reader. The title is quite descriptive, the work giving a complete survey of the points at which the common law comes in contact with the army. Although treating of matters of lively contemporaneous interest, Mr. Glenn maintains, for the most part, an admirably detached and scientific attitude, only allowing his enthusiasm for things military to enliven his style and keep the patriotic reader assured that the writer's heart is right, in spite of his passion for legal analysis. Even of the plea for universal military service, it may be said that the arguments on the other side lie outside of his subject, in the fields of sociology and politics.

To say that his final chapter, "Martial Law at Home," is not an entirely satisfactory exposition of martial law is merely to say that the author has not accomplished an impossibility. Cases and *dicta* are in irreconcilable confusion. It is submitted, however, that many dif-

ficulties will be avoided, if the distinction is constantly kept in mind between those acts with which, during a state of war, the courts will refuse to interfere, and those acts which, sitting after the conclusion of peace, they will pronounce legal.

Mr. Glenn adopts the distinction between "preventive" and "punitive" martial law and, by that distinction, is enabled to contend that the classic prohibition against martial law in time of peace applies only to the latter variety. What is meant by "time of war" is not, however, made clear. Probably by this phrase the author refers to the period that begins with a declaration of war. Admitting that it is only during such period that the punitive form of martial law may be declared, there would still seem to remain the question whether even during that period there must not be a condition of necessity to justify a declaration of martial law. Otherwise, it would be a fair conclusion from the author's argument that one form or the other, the "preventive" in time of peace, the "punitive" in time of war, may be established anywhere and everywhere at the unreviewable discretion of the executive. Certainly, a declaration of preventive martial law in time of peace must be justified by a condition of necessity. The indefinite ground is whether the punitive form that is applicable to time of war may be declared unless there is an actual necessity for such declaration.

The reader should guard against the tendency from a perusal of this book to exaggerate the importance of the "declaration" or "proclamation" of martial law, which most authorities assert to be only declaratory of the existence of a justifying necessity and not in itself to constitute authority for any otherwise illegal acts. Were this not so, it would seem that a military commander might execute the proverbial manoeuvre by means of his own boot straps and make himself legal by declaring himself so to be.

Somewhere in his essay, Mr. Glenn comments upon the awkward position of a military commander who is tried by the civil courts after the cessation of hostilities. His acts which were performed in the pressure and excitement of war are reviewed in the leisure and quiet of peace, when standards have changed and views have been modified. It is hard then to realize all the circumstances of the emergency, and we are inclined to minimize the danger through which we have passed. A similar consideration must necessarily moderate any criticism of the present work and accounts as well for the occasional flings at "legalism" and "superstition" in which the author indulges. Nevertheless, one may, without falling into offensively "superstitious" views, look with some apprehension, in view of the growing importance to the prosecution of war of every conceivable home activity, on the possibility of an expanding jurisdiction of the military power.

Martin Conboy.